

This letter discusses "shipping and handling" charges and the tax consequences of reward credits. See 86 Ill. Adm. Code 130.401(c). (This is a GIL).

June 12, 2002

Dear Xxxxx

This letter is in response to your letter dated April 17, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Please be advised that I represent a direct selling company that is registered to collect remit sales tax in your state.

My client sells products to independent business owners (IBOs) at wholesales plus shipping charges and pre-collects sales tax on the suggested retail price plus other taxable charges.

The IBOs receive profit from the difference between their cost and the selling price of the products, plus the bonus paid by the company based on their volume of sales.

The IBOs generally sell the products using the party plan. The party plan method of selling is where the IBO holds a party at an individual's (referred to as the hostess) home. The hostess invites individuals to attend for the purpose of having the IBO display and take orders for the products.

As an incentive to hold a party, the hostess may receive credits based on the volume of purchases of the party guests. These credits may be applied to the sales price of the hostess' s purchases.

Additionally, IBOs earn a premium of 5% of party guest sales in the form of a credit that can be applied to the purchase of business supplies at the suggested retail price. This credit cannot be exchanged for cash, applied to product purchases, or used to pay for shipping and handling or applicable sales tax.

Shipping and handling is assessed as one fee and is charged to the consumer based on standard rate table, which is based on the total retail price of the items purchased. This charge is separately stated on the sales order form.

Based on the above facts, my client respectfully requests a ruling on the following:

- Is shipping and handling considered a taxable item?
- When a hostess purchases products for her own use, is sales tax computed on the sales price before or after subtracting the credits earned?
- When an IBO purchases business supplies using credits to offset the retail price, is sales tax computed on the sales price before or after subtracting the credits earned?

Your prompt attention to this ruling request is greatly appreciated. If you have any questions regarding this request, please contact me.

In regards to sales of tangible personal property, as a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax. See 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax. As indicated above, charges termed "delivery" or "transportation" charges follow the same principle.

The best evidence that shipping and handling or delivery charges have been contracted for separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

With regard to reward credits, the Department's regulation at 86 Ill. Adm. Code 130.401(c) provides that "[r]eward credits, sometimes referred to as hostess dollars, awarded to a host or hostess for sponsoring a party for friends at which sellers may show and solicit orders for their merchandise, and which are awarded based upon the amount of sales generated at the party, are included in gross receipts subject to tax when applied toward purchases of the seller's merchandise. The value of the reward credit equals the dollar amount credited when the reward credit is applied." These provisions would apply to a hostess using credits to purchase products for her own use and to an independent business owner using credits to purchase business supplies.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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